

## **Australian Feminist Studies**

### **‘Abandoned women’: Transnational marriages and gendered legal citizens**

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#### **Abstract**

Abandonment of women in transnational marriages can be understood in the context of specific social milieus of community and kinship relations and legal jurisdictions associated with specific cultures of law. As a sociological-legal category that dismantles the myth of ‘flexible citizenship’ in transnational migration, abandonment must be seen in an experiential matrix constituted by the graded/differentiated diaspora, legal frameworks, and institutional structures, which frame the gendered citizen. This article attempts to read stories of abandonment in legal documents where testimonies are mediated by legal practitioners for ameliorative justice through the court, in tandem with personal narratives of abandonment as reported to the authors. Through such a reading, the article explores the manner in which particular narratives of personal hurt and ‘personal/private’ identity drawing from membership in the family and community relate with the public identity of the legal citizen, the public governance of marriage by the protective/paternal state, and the ‘promise of happiness’ in marriage.

## **‘Abandoned women’: Transnational marriages and gendered legal citizens**

This article studies the *abandonment* of Indian women in transnational marriages in the context of the social milieus of community and kinship relations in which abandonment occurs, and the cultures of law and justice delivery systems within which abandoned women seek justice. The article locates abandonment in an experiential matrix framed by a graded/differentiated diaspora, and the legal frameworks of domestic and private international law which produce gendered legal subjects. Through a reading of stories of abandonment in legal documents where testimonies are mediated by legal practitioners for ameliorative justice in tandem with personal narratives of abandonment, the article weaves together narratives of personal hurt with those structured by the quest for justice and recompense. Both the narratives, it is argued, draw from the ‘promise of happiness’ as an appropriate/desired affect associated with marital bliss (Ahmed 2010). They also direct our attention to the ways in which issues of justice in marriage are addressed in public policies, laws and institutions.

This article is based on a series of interviews conducted by the authors among 57 women from the states of Punjab, Gujarat and Delhi in India – states which have a history of outmigration from India - who experienced abandonment in their marriage with Non-Resident Indian (NRI) men, i.e., Indian men who either resided abroad or men of Indian origin who were citizens of their adopted countries of residence.<sup>1</sup> Of these, 28 women had been married to NRI men from the UK, 8 to NRI men from Italy, and 4 each to NRI men from Australia and USA, with smaller numbers to NRI men from other countries including Hong Kong and Kuwait. The women interviewed were residing in India with their natal family, having been left behind in India by their husbands after marriage or brought back to India after having moved abroad with their husband following marriage. Successive Indian governments, and the governments of states, have sought to address abandonment in transnational marriages through

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<sup>1</sup> The study was conducted between December 2013 and May 2015. Ethical approval was obtained from the School of Social and Political Sciences Research Ethics Committee, University of Lincoln, UK.

institutional mechanisms i.e., by setting up NRI cells within the existing structure of police administration and the empowerment of statutory commissions like the National Commission for Women. Yet, in the absence of an appropriate and comprehensive law to deal specifically with cases of abandonment, the laws against dowry (Dowry Prohibition Act of 1961), cruelty (Section 498A of IPC), and cheating/deception (Section 420 of IPC), are used by the police in such cases. These legal measures have been inadequate and ineffective in addressing the specific nature of violence and vulnerability experienced by women abandoned in transnational marriages. While, the incommensurability of jurisdictions in India and the countries of residence or citizenship of the husband is a crucial aspect of women's vulnerability in transnational marriages, the inadequacy and ambivalence of the police and other state institution in India entrusted with helping the abandoned women in their pursuit of justice, has exacerbated their predicament. There have been triumphs along the way, however, as campaigns by activists and lawyers in India and in England & Wales have succeeded in changing the way in which abandonment is perceived in law. The findings of this study, for example, were launched in the House of Commons in London, followed up by a campaign mounted by lawyers and activists, leading to abandonment being recognised by the family justice system in England & Wales in October 2017, as a form of domestic violence.<sup>2</sup>

### **Transnational Marriages, Abandonment and the *Promise of Happiness*<sup>3</sup>**

Our interviews with women confirmed the following three patterns of abandonment in transnational marriages: (i) a woman, migrating after marriage to her Indian-origin husband's country of residence, may be ousted or (less commonly) flee after a period

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<sup>2</sup> Practice Direction 12j as amended reads as follows: "Domestic abuse also includes culturally specific forms of abuse including, but not limited to, forced marriage, honour-based violence, dowry-related abuse and transnational marriage abandonment; "abandonment" refers to the practice whereby a husband, in England and Wales, deliberately abandons or "strands" his foreign national wife abroad, usually without financial resources, in order to prevent her from asserting matrimonial and/or residence rights in England and Wales. It may involve children who are either abandoned with, or separated from, their mother."

<sup>3</sup> Adopted from the title of Sara Ahmed's book (2010).

of abuse; (ii) a woman who has migrated with her husband after marriage may be deceived into returning to India and abandoned there, while her husband returned to his country of residence and often also of citizenship and revoked her visa; (iii) a woman may be left behind in India with her in-laws after marriage while her NRI husband went back with assurances that he would sponsor her visa, but the woman is eventually ousted or leaves because of domestic violence.<sup>4</sup>

Most abandoned women interviewed in this study were from the second and third categories, that is, they were *brought back to India* or were *left behind in India* after marriage with an NRI man. The life history method was preferred while interviewing to invite the research participants to convey the story of their lives as a whole and to enable us to locate particular experiences such as the decision to marry, the relationship with their husband and in-laws as well as the trauma of abandonment in the context of power relations, opportunities and constraints that shaped their lives. Through life history interviews, the specificity of women's lives and experiences determined by the various axes of disadvantage and vulnerability structured by gender, class, religion, caste and region, as well as opportunities – for instance, marrying an NRI man as one kind of gender/class privilege in a context where other avenues for South Asian migration are increasingly closing down – came into clearer focus. The impetus to view these factors as mutually constitutive of women's experiences, instead of a fragmented, additive understanding of social positioning (Yuval-Davis, 2006) led us to using life history interviews as a method under a broader umbrella of constructivist grounded theory methodology (Charmaz, 2003, 2006), combined with narrative analysis (Kallivayalil, 2010; Ruth and Oberg, 1996).

The interviews were transcribed verbatim where women gave permission to record them. In the few cases where such permission was not given, notes were taken and typed up after the interview. While a few research participants were accessed through snowball sampling, the majority were accessed through police, women's/community organisations and lawyers. Twenty-one representatives of community and women's organisations, police and lawyers specialising in abandoned women's casework were

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<sup>4</sup> According to Pragna Patel The Director of Southall Black Sisters (SBS), a UK-based women's organisation which provides services for black and minority ethnic women and campaigns to end violence against women.

interviewed to explore the perspective of practitioners. These interviews, which were semi-structured in nature, hoped to garner through ‘institutional ethnography’ (Smith 2005), the workings of institutions from the experiences of women, and propose ways to critique, and influence legal and political change from the standpoint of the women. As a lens of inquiry, institutional ethnography uses everyday experience of people as a way to examine and analyse social institutions and relations, to write a sociology for women as distinct from sociology about women. It seeks to understand the working of institutions through the experiential prism of those who participate in institutions and are affected by them. The life histories and the institutional ethnographies garnered through the interviews showed that the narratives of suffering as well as the quest for justice were unique in each case. But a larger and familiar pattern was also discernable making for a common narrative of abandonment in transnational marriage.

In addition, legal documents including First Information Reports (FIRs), which are complaints registered by the police in India in the form of detailed information about an offence and affidavits submitted to the court by the women through their lawyers were obtained from the lawyers, or shared by the women with the authors. Studies have pointed at the different ways in which law’s relationship with individuals and communities may be seen. Among these are those that see law as the ‘state’s emissary’, opening up community practices for legal intervention (Guha 1987, 140-141); law as performing an anthropological function, i.e., transforming individuals ‘into a homo juridicus’, instituting them into ‘rational beings’ with ‘judicial persona’ (Supiot 2007, ix); and law playing a constitutive role shaping ‘social relations’ (Das 2011, 321) often by allying tactically with the ‘order of the family’ to ‘preserve its honour and reputation’ (Das 1995, 82). Women’s narratives when read in tandem with their representation in legal testimonies show the distinct ways in which legal imperatives mediated and structured personal narratives to make them intelligible for judicial scrutiny. Alongside her figuration as a ‘gendered legal subject’, the abandoned woman emerged in these narratives as the ‘affect alien’, estranged from ‘the happiness of the familiar’ (Ahmed 2010, 9-13), which she must desire but cannot achieve in the intimate space, and must, therefore seek for recompense through institutions of the police and courts.

Abandonment in transnational marriages, when seen within the framework of migration and citizenship, presents several questions. Among them, the question of choice (voluntary vs. compulsion debate), is pertinent not only for marriage and migration independently, but more emphatically for migration when it happens as a result of marriage (Turner 2008, Palriwala and Uberoi 2008). The literature on global population flows has linked up migration with mutations in citizenship (Ong and Collier 2005, 4, Ong 2006), which generate new landscapes of citizenship, replete with 'entangled possibilities' (Ong, 2006, 499). One of these possibilities is the extrication of citizenship from conventional nation-state geographies, and the expectation that this would lead to democratic citizenship with human dignity at its core (Vogel and Moran 1991; Turner 1986). Yet a simultaneous lament of 'crisis in citizenship' has accompanied these developments, generating state policies and practices so that far from becoming permeable, national boundaries are fortified or opened selectively. In such a preferential framework, citizens become entrepreneurs, maximizing their gains and opportunities through 'flexibility' with mobility, rather than rigidity with stability (Ong, 1999, 2006, 2007, 2008). On the other hand, there are those who fall out of these systems of preferences or may remain in a liminal state of deferred citizenship because of their class, caste, race and gender,

The abandoned woman is ambivalently located since she experiences mobility through marriage, but remains dependent on her husband in the host country. Till she becomes a legal citizen, she remains a citizen-consort, and a subordinate citizen in an alien jurisdiction where spousal visas make her dependent on marital status, restricting her rights of residence and livelihood opportunities. When her marriage breaks down, she does not have the juridical capacity to claim rights as a citizen, and must submit to the custodial and paternal protection of government agencies. In her study of modern transnational mobility in South Asian diaspora in USA and the emergence of abandonment as a new form of violence against women Shikha Bhattacharjee (2013) points out that transnationally mobile diaspora community enables the husband to consciously thwart the access of women to law, and any recourse thereby to her rightful financial, marital and social assets. In other words, the husband's entitlement to 'flexible citizenship' leads to a corresponding disentitlement of the abandoned wife, which is exacerbated because masculine flexibility and mobility enjoyed by the husband undermines the protection afforded by national laws.

Other studies have shown the interaction between gender and power in transnational marriages to be a risk factor facilitating domestic violence, exacerbated by language barriers, social isolation and the fear of transgressing of cultural gender norms (Williams & Yu, 2006, Charsley 2007). According to Liversage (2013), when the act of marriage (an ostensibly private decision between two individuals or two families) intersects with the act of migration (governed by nation-states), the state moves to regulate transnational marriages with policies that bring in the ability to control citizenship and mobility into the power structure of marriages, such as probationary periods in Denmark, or conditional immigration status in Taiwan (Williams & Yu, 2006). In her study of Turkish transnational couples in Denmark, Liversage looks at the interaction of gender and power in cases of marital breakup (2013). When women are the sponsoring spouses, they often obscure their power to withdraw residency rights from their husbands, to protect themselves from violent repercussions from their husband, or to be not seen as challenging the gendered hierarchy within marriage. However, when men are the sponsoring spouses, they are able to act with impunity in ‘disposing of’ (Liversage, 2013, p. 1079) their wives by sending them back to Turkey, sometimes by fraud. Similarly, research on battered immigrant women in the US (Erez, Adelman, & Gregory, 2009) finds that the general difficulties of women facing domestic violence are heightened by the challenges of the experience of migration; and that immigration itself shapes the meaning that women give to violence and controlling behavior from their partners (p. 51). While most immigrant women are found to lack sufficient awareness of legal and economic sources of redress available to them across various contexts (Choi, Cheung, & Cheung, 2012; Liversage, 2013; Williams & Yu, 2006), in a few cases women are able to mobilize such resources for different ends. In some cases, they are able to ensure their safety (Erez, Adelman, & Gregory, 2009), in others, seeking financial compensation becomes a way to document their innocence and improve chances of remarrying (Liversage, 2013), or further, retain residency rights and gain access to their children (Williams & Yu, 2006). While our study confirms the ‘gendered geographies of power’ in transnational marriages (Mahler and Pessar, 2001) which link the intimate space with that of the nation-state, it also attempts to show how these geographies of power play out distinctively at different sites – of the intimate and institutional.

The experiences of abandoned women as narrated to us show that women were disadvantaged and disempowered by their legal status as dependents in an alien land with unfamiliar legal systems. Insecure immigration status often prevented marriage migrants from seeking help. In most cases, ex-parte divorce proceedings were initiated by the husband, in a context where the woman was ignorant of the proceedings or could not represent herself if she had been abandoned in India. Some countries, including the UK, Canada and the USA, have policies that entitle immigrant women who experience domestic violence to leave their abusive partners and apply for leave to remain in the country. Yet, as evident in the case of Shiva, one of the women we interviewed who accompanied her husband abroad after marriage, felt disempowered by her husband's use of immigration controls and her inability to escape an abusive marriage:

I was very frightened. I went to my husband's friend for help. He told me that I could not leave my husband's house and live separately since I was staying in this country illegally. The police would put me in jail straightaway. I learnt that he had not brought me there as his wife but as a visitor. The time limit for my stay was over, and I was in deep trouble. When he came home, he beat me badly that night. He threatened me: "If I cut you into pieces and bury you, no one will know about it." I felt that he was capable of killing me. Over the next few months the beatings continued, even escalated. I knew that I was staying there illegally. So, I didn't know what to do (Shiva, 29).

In most cases, following abandonment, ex-parte divorce proceedings were initiated by the husband. A majority of the women were not aware that their husbands had initiated ex-parte divorce proceedings; those who received the notification did not understand the meaning of the documents sent to them; and those who did, lacked the resources to represent themselves in court proceedings in another country. In some cases, women remained unaware that they had been divorced by their husbands. Given that court cases in India take years to resolve, and require both parties to be present in hearings, the women could not comprehend a legal process which gave, as in U.K., merely six weeks to women to register a response. They, therefore, had no opportunity to negotiate any financial settlement, including the return of their dowry or any maintenance for their children (Anitha et al 2018).



Where the woman was left behind or deceived into returning to India, the abandoned woman faced challenges at both societal and legal levels. Ignorant of and unable to participate in the ex-parte divorce proceedings initiated by the husband, women found themselves dependent on their natal or affinal families. The fact that the husband was not present, and indeed ‘absconding’, made civil and criminal proceedings difficult to pursue. Most complaints ended in a compromise agreement or were not pursued adequately by the police. Very few women received financial settlement of any kind upon divorce, and none received any maintenance for their children or return of their dowry. The findings suggest that cultural practices like dowry, son preference, and dominant social norms which make for patriarchal control and devaluation of women played an important role in the violence and abandonment that ensued in all marriages. Crucially, however, the inadequacy of national and transnational legal mechanisms served to create transnational brides as a particularly vulnerable category

About two-fifth of the women interviewed had migrated to their husband’s countries of residence after marriage, and the rest were left behind in India with their in-laws, while they awaited a spousal visa. Almost all the marriages had been arranged in haste, since the NRI men could stay in India for only a short duration. Exchange of dowry and lavish celebrations whose expenses were borne entirely by the women’s families were a common feature of all the marriages. All the women reported having suffered physical violence, coercive control, isolation and financial abuse. Continuing demands for dowry were significant contexts for abuse for the majority of the women and part of the process which led up to abandonment. A third of the women interviewed reported that they had been sexually abused by their husband and almost a quarter disclosed sexual abuse by male in-laws. Socio-cultural norms against divorce and the stigmatisation of divorced women in particular, compelled women to remain in abusive relationships. Our interviews also showed that women wanted to make the marriage ‘work’, in other words, live the hetero-normative happy married life that they had been led to believe was their destiny. Most women who had experienced sexual abuse stated that they were disclosing it for the first time while talking to us.

## **Vignettes/Portraits: The ‘Affect-Alien’ and the gendered subject of law**

Women’s petitions in law courts and police complaints - where available to the authors, - and the testimonies of women, show the complex figuration of abandonment at the interface of law and citizenship, and law and affect. Reading the legal and the personal narratives in tandem shows how stories of abandonment are etched in two different registers. In legal documents they become mediated testimonies subjected to the requirements of judicial comprehensibility. The emotional repertoire was made legally intelligible by an exclusive focus in police statements on the legal category of ‘cruelty’ which stemmed from dowry abuse. The legal construction of violence appeared inadequate when seen alongside women’s narratives of what *they* termed as violence - meandering between expressions of personal hurt and the desire to cause hurt, speaking of overwhelming humiliation as the men disengaged from marriage.

In this section, three vignettes of abandoned women’s quest for legal justice, corresponding to the three forms of abandonment identified earlier in the article are discussed.<sup>5</sup> Meena’s case is one of a marriage migrant who is deceived into returning to her country of origin and abandoned; Navjyot Kaur’s case is one where she migrated to her husband’s country of residence, and was subsequently ousted and forced to flee after a period of abuse;; Parminder Kaur’s case is that of a woman who is left behind in India with her in-laws while her husband goes back to his country of residence with the assurance that he will sponsor her visa. None of the cases discussed shows a closure or even consistency which could suggest certainty of legal procedure. The unevenness is reflective of the complex ways in which the geographies of power for particular sites of abandonment are constituted. While Meena’s case is discussed separately, the two other cases are discussed together to help piece together women’s relationship with law, in the absence of detailed information for each case.

### **Meena**

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<sup>5</sup> All names have been changed to protect women’s identities and a pseudonym has been allocated to each woman in accordance with regional and religion-specific naming conventions.

A software engineer, Meena (P 15) worked in the corporate sector in a city in southern India. Born to doctor parents, Meena and her younger sister had grown up in Delhi, attended one of the elite 'private' schools in Delhi, and went to college to study for a degree in engineering. Her sister had a 'love marriage' and settled abroad. Meena faced pressure from relatives to 'settle down', having reached in their opinion - the 'marriageable age' - and agreed to an 'arranged marriage' with an NRI. The 'boy's' and the 'girl's' families met for 'negotiations' through a matrimonial advertisement in a magazine which catered to Meena's community. During this period, Meena met her prospective groom once, and communicated with him, intermittently through email. Meena accompanied her husband to Hong Kong after marriage where she felt neglected and faced disparagement and sexual abuse from her husband. Soon afterwards on the pretext of visiting India during the festival season, her husband brought her back to his parents' house in India. While he returned to Hong Kong, he asked her to stay on and get her 'protruding' teeth surgically corrected. Meena's refusal to undergo the surgery, since it would require a sustained stay of up to two years in India and the outcome would be uncertain, angered her husband. Facing constant harassment for dowry, she shifted to her parents' home in Delhi, and filed a complaint with the National Commission for Women, a statutory body set up in 1992 under an Act of Parliament 'to protect and promote the rights of women' She also filed a criminal complaint with the Crime Against Women Cell of the Delhi Police against her husband's family for cruelty and harassment. Synchronously her husband's family filed a divorce case against her in a court in their city of residence. Meena subsequently filed a petition in the Supreme Court of India seeking the transfer of divorce proceedings to Delhi.

Meena (P 15) figures in distinct ways in the three sets of legal papers which we got from her lawyers: as a *petitioner* seeking transfer of the divorce case filed by her husband to Delhi; as a *complainant* before the Crime Against Women Cell where she establishes the charge of cruelty against her husband and his family; and finally as the *aggressor* in the divorce petition filed by her husband. In the petition before the Supreme Court appealing for the transfer of the divorce case, the case history is mostly factual and procedural. Cruelty is mentioned, but remains marginal since the purpose of the appeal was to convince the Supreme Court that the court where the petition lay presently, had no jurisdiction over it. By shifting the case to Delhi, Meena could take control of the case by relocating it to a space where her husband's family could not

intimidate her and continue to work in her new job, having had to leave it when she got married and went to live with her husband abroad.

A second set of legal papers are constituted by the complaint made by Meena against her husband's family to the Crime Against Women Cell. The complaint is replete with incremental recall of episodes of cruelty, which become 'hinge-points' holding together a narrative of dowry related violence. Yet, the narrative around cruelty is also interspersed with a parallel narrative where the 'promise of happiness' is continually sought through love in marriage. In her complaint, Meena states that she had become 'emotionally connected' to her husband, 'carried out things to his liking to build up [their] relationship', especially when he was 'at a loose end', having lost his job. However, denial of affect and the resultant feeling of estrangement recur intermittently:

My husband totally ignored me and I was left all by myself. I was completely ostracised with no one including my husband communicating with me other than on need basis. My father-in-law was often furious with me, and would also touch me inappropriately (Complaint)

The husband's divorce petition inverted the narrative, presenting Meena as the aggressor, a melancholic brooding individual, a stranger in his lifeworld, who had caused him mental trauma. The terms of marriage, the petition states, were violated by the bride's side, who had assured the 'petitioner' that Meena was 'caring and homely' and also liked 'outdoor life'. Alleging that Meena turned out to be an 'unhappy' and 'negative' person, 'always aloof', 'constantly brooding' and complaining 'at least ten times in a day' that she had left her job, he accused her of lacking 'affection' with 'the only passion to work on laptop', throwing tantrums at being asked to 'dress up for a party' and insisting on wearing 'T Shirt and jeans' on all occasions, and rejecting 'sexual contact' with her husband.

The story of Meena's life as she narrated it to the authors, was not burdened by the search for a narrative structure, which would lead to legal affirmation of 'cruelty'. While the tropes of the 'good wife', dowry abuse and cruelty were framed in legal testimonies by the dominant constructions of the domestic violence law, in her personal accounts, the search for happiness in marriage foregrounding the modular 'good wife',

is not the dominant trope. While growing up, she was always conscious that she had to 'settle down', but it did not mean settling down in marital life. There is, however, a dissonance between the agentic self - a 'professional' wanting to work, and her 'Indian values'. She tells us that her husband found it strange that she was still clinging to him, despite the abuses. She wanted to save the marriage, hold on to the idea: "I am an educated, professional girl, but still an 'Indian' girl in my upbringing, I have my values, I would go the extra mile to save my marriage." Her husband, she felt, 'finally saw that she would not leave easily, she was a just a 'good Indian girl', so 'he schemed to get her out of the house'.

## **Parminder Kaur and Navjyot Kaur**

Parminder Kaur was left behind in India after marriage. Her husband refused to take her with him after marriage, unless her parents gave him dowry including a car. Parminder Kaur filed an FIR against her husband and his family in Amritsar alleging cruelty and harassment for dowry. The chronology of physical abuse, intimidation, and humiliation Kaur experienced in her affinal family, as narrated in the FIR slips frequently into the legal third person:

In October 2011, the *above said accused* gave me beating ...and turned me out of the house. I came to my mother's house with only three sets of clothing ...*the accused* openly declared that if their *above* demands [of dowry] are fulfilled then only the girl will stay in their house [...] and they also gave threat that in case they leave the girl in their house by force then they will kill her. (FIR)

Kaur's husband proposed a 'compromise', promising to obtain a visa to for her on the condition that she withdrew the criminal complaint against his family. His family contested the criminal case by producing evidence to establish that since the family did not live together, and indeed, they had separate kitchens, there was no joint family headed by the eldest brother who Kaur claimed had harassed her to extract dowry. While the authors were not able to reach Parminder Kaur, an interview with another research participant - Navjyot Kaur - showed resemblance with Parminder Kaur's

experiences, showing how specific stories of abandonment linked up with other similar stories.

Navjyot Kaur (P 13) got married in 2009 to an NRI man living in Italy after hasty negotiations mediated by the extended family without any meeting between Kaur and her future husband. Navjyot Kaur was from a lower middle-class family and had only received school education. Her husband returned to Italy ten days after the wedding promising to come back for her. Navjyot Kaur went to live with her husband's family where her two married sisters-in-law also resided. Kaur was harassed for dowry and forced to leave her marital home. Her family approached the police to intervene and persuade her in-laws to take her back. The family also asked community leaders and elected representatives of the village governing body – the Panchayat - to help resolve the deadlock. Navjyot Kaur's husband finally agreed to take her to Italy with him on a tourist visa. In Italy, Kaur suffered domestic violence, was locked at home when her husband went for work, and was constantly told to return to India. In the course of one episode of violence, the neighbours called the police, but her husband persuaded her not to file a formal complaint. The harassment increased after Kaur became pregnant and gave birth to a baby girl. Angry at the birth of a female child, her husband forced her to leave home, and insisted that she could return only if she abandoned the child. Kaur took shelter in a Church and lived for another two years in a women's shelter home, before her parents were able to bring her back to India with the help of the Indian Embassy. Kaur's family filed a domestic violence case with the police in India in 2012. Her husband's parents came for the hearings, but her husband stayed away.

All three women suffered abuse and domestic violence, coercion and financial isolation, and took recourse to law for justice, but two of them, like several others we interviewed, also explored other modes of intervention i.e, the extended family and the panchayat. Other women we interviewed sought in addition the help of women's organisations, social activists, and statutory bodies like the NCW. Of the 57 women we interviewed, 23 women had migrated upon marriage. Of these 16 were taken back to India by their husbands, abandoned, and their visa revoked. In India, they found themselves caught in the legal web where justice was largely elusive. Indeed, lack of trust in the police and law, made them take recourse to community networks and the

Panchayats, to help them negotiate a compromise, which became the substitute for justice.

### **Negotiating a Compromise**

Most women we interviewed had sought help from the police in India. Often the police refused to register a case. In cases where an FIR was registered, it was tedious to follow it up because the husband and his family were domiciled abroad. In cases where the husband's family resided in India, the police often did not pursue the case adequately, or did so only when a higher official intervened. Consequently, consistent with previous research (Chaudhuri et al., 2014), we found that a majority of women eventually sought help from informal sources, including sympathetic relatives, and the extended family who they thought would be sympathetic and effective *in negotiating a compromise*. Literature suggests that family support in cases of domestic violence is often conditional upon the woman's efforts to 'make the marriage work' through 'adjustment' (Ahmed-Ghosh, 2004; Panchanadeswaran & Koverola, 2005). While these strategies are examples of bargaining within patriarchal arrangements (Chaudhuri et al. 2014), our findings showed that they were by and large ineffective. This is evident from the fact that about a quarter of our research participants were forced to flee to their parents' home in the face of escalating and intolerable violence. Three women from among those we interviewed reported that they were abandoned within two weeks of the wedding, while some were abandoned after eight years of marriage. The majority of the marriages lasted between two to three years.

Sharanjit was a graduate who taught in a school. Her family arranged her marriage to an NRI man in Germany who left her with his mother and returned to Germany three months after the wedding promising to take her with him later. Their marriage was not registered and he never came back for her. They then turned to the Panchayat whose members helped Sharanjit's family file a complaint in the NRI police station in Punjab. When we spoke to Sharanjit, her mother, members of her extended family, and some Panchayat members were present. What was the purpose of filing an FIR, we asked her. "Justice", she said. What did justice mean to her?

Justice means that the boy gets such a punishment, that he isn't even able to look at another girl. (Sharanjit, 28)

What about compromise? Does she wish for a compromise? Who will ensure that it works? One of the men accompanying her, who introduced himself as a Panchayat member, responded:

We [the Panchayat] will take a guarantee [...] when 20 men in the Panchayat sit, someone will take a guarantee...we will figure it out with him (the husband). She is our daughter, the village's daughter. ... (Men with Sharanjit)

The men from the Panchayat considered themselves responsible for the 'many daughters' of the village who were being hoodwinked by NRI men, and promised to push their cases with the police, in case they failed to reach a compromise.

### **'Complicity' or 'Some Amount of Handholding'**

In Punjab (as in Kerala, and Delhi) a 'parallel structure' of police called the NRI Cell exists to address the problems of NRIs, with its headquarters in Mohali near Chandigarh. The NRI Cell is an integrated structure headed by an officer of the rank of Inspector General of Police assisted by a staff of 70 to 80 personnel. There are 15 NRI police stations spread across districts in Punjab, with a cluster of 4 to 5 police stations falling under the supervisory control of an office of the Deputy Superintendent of Police (DSP) rank. The entire organisational structure has two Superintendents of Police, 6 DSPs and 15 Station House Officers (SHOs). There are almost 350 people catering to NRI cases, which are not restricted to marriages, but also cover property disputes, etc.<sup>6</sup>

Police intervention in cases of abandonment took place after negotiations through community networks had failed. By and large, at least in the initial stages, the police replicated the strategies of the family and community. However, unlike the family

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<sup>6</sup> The website has put up a brochure of do's and don't's in NRI marriages, a list of complaints by NRIs and a district level list of names of Proclaimed Offenders (POs) <http://punjabpolice.gov.in/AboutUsNri.aspx#> accessed on 26 November 2017.



and community that have the power of social sanction, the police wield the coercive authority of the state, even while using strategies of reconciliation. The Station House Officer (SHO) in an NRI Police Station explained to us that as a first step the police try counseling. The boy's parents are informed of the complaint against them - through email if they are out of the country. In their absence the police get a relative or a representative to 'work out the matter'. Yet, in order to get the boy's side to come 'to the table to talk', some degree of coercion is involved, and a reminder to the boy's family that:

...he will be declared a PO [Proclaimed Offender], his property will be attached, a LOC [Look Out Circular] will be issued, and his passport will be impounded. After this they usually land up for counselling. *The idea is to save the marriage.* (Police Officer, District NRI Cell, Mohali)

A high ranking officer with the NRI cell explained to us that 'informal mechanism' like mediation for reconciliation was always preferred by the police to save the girl's family the tedium of long drawn court cases which made the women dependent on male family members, and involved exorbitant expenses.

....Without the mediation, it's one sided and the girl is the victim. *The role of police is that we do some hand-holding, and tell the boy's family to behave themselves otherwise a criminal case could be filed against him and his family.* (Police Officer, NRI Cell)

The NRI police cell interpreted its role to be different from 'ordinary' policing function. In the Punjab Police Website, the NRI cell is listed as part of the community affairs division of the Punjab Police, which gives it a specific orientation. The task of 'hand-holding' the victim of abandonment, to protect her from the long and tiring legal process, while also acting as an adjudicator arbitrating between parties to reconcile them, effectively substituted any other form of justice that may otherwise be available to the abandoned women.

Our conversations with Jatinder corroborated the police officer's views regarding the insidiousness of the legal process following abandonment. Married to an NRI man in

2007, Jatinder came to know only later that her husband had married several times before and had abandoned his previous wives after appropriating their dowry. Jatinder's husband stayed with her in India after marriage for one and a half years and then returned to his country of residence. Her in-laws made demands for more money as a condition for sending Jatinder abroad to her husband. As in other cases, Jatinder was sent back to her parent's place and not allowed to return to her marital home:

First we took the lawyer's suggestions and then we went to the police station, to the women's cell. Filing an FIR took a long time. It was finalised after many enquiries. I went for every enquiry and each time I went there, I cried. I'd never seen a police station in my life and today I had to go there and suffer humiliation. Why? Just because of one man I had got married to. (Jatinder, 30)

About a quarter of the women we interviewed had been, or were currently engaged in court proceedings, most of them for several years. Most of the women were still trying to find some resolution that would enable them to secure their future financially, while others had given up all hope after expending considerable time and their meagre financial resources. None of the women managed to secure regular maintenance, while only a few secured the return of their dowry or an equitable financial settlement. Very few women received financial settlement of any kind upon divorce, and none received any maintenance for their children or return of their entire dowry.

### **‘Getting out of *Bhavsagar*’: The elusive promise of happiness**

A lawyer from Bhatinda, who actively took up cases on behalf of abandoned women believed that abandonment was a consequence of the desire of ‘everyone to get out of the *bhavsagar*’. In Hindu philosophy *bhavsagar* refers to worldly existence, and the difficulties people face in the world as mortal beings. For the women we spoke to, marrying an NRI was not a decision made by them. It did not lead to a fulfillment of the ‘promise of happiness’ - a double promise of happiness in this case - of exiting the *bhavsagar* and entering the life of marital bliss. It led, on the other hand, to further entanglement in the *bhavsagar* - exacerbated by a sense of being caught in an inextricable web of deception - in which both happiness and justice remained elusive.

Indeed, a host of agencies that the women approached in the hope of justice seemed befuddled by the limitations inherent in their organisational structure. The NCW has one desk and a person designated to attend to cases of abandonment in an entire floor assigned to NRI matters. Following an order issued by the Ministry of Overseas Indian Affairs (MOIA) in April 2008, the NCW is the coordinating agency at the national level for dealing with NRI related matters. The NCW website gives details of the procedures to be followed in cases of ‘desertion’ in NRI marriages. The official at the desk where cases of abandoned women were addressed, explained to us the role of ‘coordination’ played by the NCW between the complainant, the police, and the various embassies, especially in court proceedings abroad, and in providing financial aid to deserted women. The MOIA has a scheme for giving legal and financial assistance to abandoned women for obtaining counseling and legal services through NGOs and legal organisations empanelled with Indian embassies in specific countries.<sup>7</sup>

In a Right to Information (RTI) application filed with the Indian Embassy in London on 18 December 2015, the authors tried to elicit details of the NGOs empanelled with the Embassy since the scheme came into operation and the number of cases that were handled by it. The response to the RTI application revealed that for three years in a row after the scheme came into effect, that is, from 1<sup>st</sup> April 2012 to 31<sup>st</sup> March 2015, and then again in 2016, an NGO ‘Good Human Foundation’ was empanelled. Another organisation K.D. Law Limited was also empanelled October 2013 onwards. Together the two handled 29 cases of abandonment. According to the Embassy official, the empanelled organisations provided ‘initial legal assistance, counseling, liaison with local police, and represented applicants in local courts if required’. The information on the number of hours of counseling was not available. We could not find out the nature of cases, and fate of each, since those questions did not figure in our RTI application. But Gita, one of the women we interviewed, did have some experience with the scheme which she shared with us. Married to an NRI man settled in the UK, Gita was left behind and could not join her husband since he withdrew sponsorship and started demanding divorce on the ground that she was unwilling to consummate the marriage. She filed an

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<sup>7</sup>[http://www.mea.gov.in/images/attach/FAQ\\_links\\_updated\\_as\\_on\\_06\\_06\\_2017.pdf](http://www.mea.gov.in/images/attach/FAQ_links_updated_as_on_06_06_2017.pdf) accessed on 26 November 2017.

FIR in June/July 2011 and her husband was declared a Proclaimed Offender. She tried emailing to get financial help from the court in UK, and asked the UK embassy for help with the visa, but received no reply to her emails. Subsequently, she approached the Ministry of External Affairs, and signed a consent form for an NGO to take up her case. The NGO, according to her, received 2000 pounds to fight her case. She received one phone call from a woman from the NGO, but had no further communication. Gita stated:

Till the money was released the MEA was very prompt in replying to me. After that whenever I approached the MEA to inform them that the woman from the NGO was not replying, I would get no answer. (Gita, 29)

Apart from the question of transparency in the MOIA scheme, a host of other protections including the compulsory registration of NRI Marriages, recording of passport numbers and details of NRI spouses at the time of marriage, and the correction of delays in police assistance, and redemption by courts for divorce and compensation are important for addressing the problems faced by abandoned women.

## **Conclusion**

The abandonment of women in transnational marriages raises a range of concerns, which are located at the interface of the gendered nature of transnational migrations, parallel, exclusive and often conflicting laws and jurisdictions governing marriage in transnational contexts, and questions pertaining to domestic violence in contexts where the institutions of the state remain inaccessible to women seeking justice. An exploration of women's experiences of seeking justice through the institutions of the state, including law, courts, and law enforcement agencies, has opened up the possibility of anchoring these questions differently - giving centrality to how women perceive institutions and justice delivery system. This article contributes to critical legal feminist studies which considers laws and public institutions as an effect of social power. Seen from this vantage point, the initiatives of the state to address abandonment as a condition of distress required the mobilisation of restorative community practices, bringing about an alliance between the custodial functions of the family and the state.

Significantly, however, while feminists have persistently interrogated the relationship between the state, law and women, they have simultaneously pushed the state to enact gender just laws and policies. The history of women's struggles to 'reform' laws and make their enforcement more efficient and effective has shown incremental changes, as a direct outcome of the demands from the women's movement, which has continued to build upon the gains from earlier moments of success.

The gains made by women's organisations in United Kingdom, for example, can be seen in this framework of engagement between the state and the women's movement. After prolonged campaign by women's organisations, women abandoned in United Kingdom were given housing and welfare benefits under the Domestic Violence Rule (DV Rule) which came into force in 2002. Under this rule, a woman could apply for Indefinite Leave to Remain (ILR) in the UK. To avail ILR, she had to prove that her marriage had broken down because of domestic violence. Most abandoned women had insecure immigration status and could not access public funds, nor be accommodated in women's refuges, and would remain destitute while they were expected to apply for ILR. In 2010, following a campaign by SBS and allied organisations, the Destitute Domestic Violence (DDV) Concession of 2010, made such women eligible for limited access to benefits while they applied for ILR. In October 2017, the family justice systems in England and Wales, recognized 'abandonment' as a form of domestic violence.

A petition was made by eight abandoned women before the Supreme Court in India in November 2018 asking it to instruct the Indian government to make policy changes to treat abandonment as an offence requiring appropriate legal frameworks. Earlier in June 2018, an inter-ministerial panel suggested changes in the passport and marriage registration acts requiring that NRI marriages be compulsorily registered and the marital status of the NRI men be updated within a week of the marriage and the website of the Ministry of External Affairs put up summons issued to NRI men upon complaints of abandonment by their wives. A Bill to give effect to these measures was introduced in the Upper House of the Indian Parliament in February 2019 laying down that all transnational marriages should be registered in India within thirty days of the marriage; failure to do so would result in the revocation of the passport of the NRI spouse. In addition, if the Bill is passed and becomes a law, the courts would be empowered to

issue warrants of summon to the NRI groom through a designated website. In case of non-compliance, the court could issue orders to declare him a proclaimed and absconding offender and attach his property in India. Our interviews with abandoned women showed that legal measures and their enforcement is dependent on the way the police interprets its role in the implementation of law, and whether women have the resources to pursue their cases through the police and the courts of law. While such laws are intended to and can serve as a deterrent, they can do so only if abandoned women are able to take recourse to them. Our study has shown that both access to law and efficacy of law, are mediated by family and community networks, and the police often fails to extricate itself from the codes of honour dictated by the community and ends up acting as its extension.

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